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LECTURES ON THE PHILOSOPHY OF LAW.

By JAMES HUTCHISON STIRLING.

II.

Freedom of the Will and Idea of Property.

GENTLEMEN:—At our last meeting we saw the *Notion* of Hegel, and in its connection with Kant; for I still believe Hegel to affiliate himself in the main *directly* to Kant. Let him owe what he may, principally by way of suggestion, whether to Fichte or Schelling, it is really Kant's substance that Hegel carries further. We saw that an excellent clue to that Notion was explanation as explanation. Explanation, namely, as explanation, is a reduction to self-consciousness, and it follows that we have reached *the* ultimate when we have reduced self-consciousness to *its* ultimate. Now, that *is* the Notion. Or, *the* notion is an act of self-consciousness *as such*—the perfect *generalization* of such act. This, then, is the creative germ of all and everything; and, as such evidently it can be no blank self-identity: it must possess, in its own self, difference; and it must return from this its difference into that its identity again. No act of self-consciousness whatever but is seen to exemplify this abstract description. Self-consciousness so constituted, then, is conceived to develop itself, in obedience to its own inner law, first into its own *inner* system. This, the realization of the logical *notion*, is, and in connection with that notion, the logical *idea*. The idea now, as completed *inner* system, sunders, in Nature, into the *externalization* of its own self and of all its constituents—into a chaos, then, of infinite *physical difference* and infinite *physical contingency*. This chaos, however, re-collects itself, and returns in Spirit (Mind) to the Universal again. Mind now, or Spirit, appears in a succession of faculties, and rises through its subjective and objective forms into its absolute form—into Absolute Spirit. Subjectively, more particularly, it reaches, through stages of Perception, Conception, Thought, the full fruition of theoretical intelligence, and it is at the transition of this into Practical Spirit, into Will, that we have now arrived.

This transition it will not be difficult to understand, if we shall but fairly realize to ourselves what the completion of *theory* is. Theory when complete, that is, has converted its objects into itself. The objects of theory are indeed outer, but when it *understands* them it has fairly made them inner: all that they truly are, all that they substantially are, is now within. It has abolished their alienation, their foreignness; it has made them *its*—it has determined them *its*—it has *determined* objects as *its*. But intelligence that *determines* objects is Will. This is Hegel's transition from what we know in common parlance as the *intellectual powers* to what we know in the same parlance as the *active powers*, or this is Hegel's transition from theory to practice, from what he calls theoretical spirit or intelligence to practical spirit or will. We see at once that it is ingenious—that it is ingeniously figurative. Theory surveys an object, and *enjoys* its survey; but the *result* of such survey is to make the outward inward; and, if the outward is inward, it is theory's own, it is *determined* by theory, which is now will, and its *enjoyment* has become an *act*. Hegel, of course, does not expect us to see in this transition an actual fact in time, but only the *potential* connection of intelligence and will, only their connection *sub specie æternitatis*. And viewed so, it is perfectly credible; for intelligence and will are not in reality different, but the same: they are but action and counter-action of the same common life. Where the one is, the other is: will is but thought in act, thought is but will *in potentia*. It is, therefore, true in an absolute, or perfectly general, reference, that thought *of itself* determines itself into will, remaining at the same time the *substance* of it—of will. This, I think, will be seen to be true from the very nature of the case, and apart from the ingenious figurativeness of Hegel's steps, which are again briefly these: To think an object is to understand it. The thinking of an object, then, is the birth of a new object out of or in the old object. But this new object belongs to thought; and this new object is at the same time all that is true in the old object. This new object is all that the old object really is—this new object is, in fact, the old object. But thought has thus manifested itself to determine an object, and thought that determines an object is will.

Will, then, is thought determining itself out of its own self into objects, or, as we more generally figure it, into action on objects—a difference of phrase, however, that makes no difference in the facts; for, as we have just seen, our *action* on objects is to determine these objects as our own. They are, indeed, outer to us; but, in that we understand them, we enter into them, we participate in them, we establish a community between them and us; that is, we make them ours.

But, though there be this intimate connection between them, it is certain that will does not, in the first instance, *appear* as thought—appear, that is, on the stage of existence. Will, as we first *find* it, is, like everything else, *in a state of nature*. Will, as we so find it, even in man, is rather an instinct than a rational thought. The needs and greeds of the mere animal are the matter in which it first asserts itself. Nevertheless, man is essentially reason, and, even in yielding to these needs and greeds, it is reason that comes gradually to the front. For example, will cannot yield even to these needs and greeds without *reflection*, and reflection once begun can only end in full-fledged reason. The needs and greeds are compared with their objects and the means of obtaining these. They are compared with each other. They are compared, however vaguely at first, with the chief end of man—thought, reason—which, in all cases, is always at least *implicitly* present. The result of this comparison on the part of reflection is a subordination and classification of the various needs and greeds, of the various desires—a subordination and classification that can only end in System. This system now is what we call happiness, and the needs and greeds, accordingly as they variously contribute in quality and quantity to happiness, are variously arranged and valued. But, after all, this arrangement never becomes perfect, never becomes satisfactory. The needs and greeds are even infinite; subject differs from subject in regard to them; according to times and seasons, subject differs from his own self in regard to them; the whole quest of what is called happiness manifests itself to be indefinite, obscure, and contingent; and let it end in what criterion it may, this criterion remains always an *enjoyment*, something subjective and contingent, something limited. In this way, then, it becomes plain that will can

never content itself with what is called happiness as a final aim, and that there must be found for it an object wider, deeper, and more essential. This object can only be its own self. The only satisfactory final object to will can only be will. This is one of those expressions that is peculiarly perplexing and distressing to the English reader of the philosophical Germans. The difficulty, however, is only in the phrase and not in its import. As we have already seen, will is identical with thought, with reason; and when we substitute these synonyms in the phrase that "will only can, only *will* will," all ambiguity vanishes. That the object of the will should be will: this may appear an empty phrase, but it is not so when we say the object of *reason* is reason. Reason, we know, has realized itself in the world around us, in God's world; and it does not seem strange, with that fact before us, to say reason seeks reason. But reason has also realized itself in the world of man, in its body of laws, in its code of morals, in the general arrangements of what is called the State. Now when we know that it is will which has realized reason in law, morals, and state, it will no longer appear absurd to say will realizes its own self; the object of will is will, or will wills will. It will at once suggest itself to us, then, that the will so spoken of is thinking will, and thinking will is free-will.

Of course, as we are all now educated in Great Britain, this is considered by all of us, or all but all of us, an absurdity; the supposition of free-will is an absurdity. Most modern English authorities are of this opinion, and they really have brought their public to the *same* opinion. Now, this state of opinion on the part whether of author or reader, results from *making judicious play* with what are called *motives*. We never act, it is said, but from a *motive*; this motive presents itself to us by *necessity of the case*, and it involves us in a like necessity. Some few writers seem to doubt this, and not to be sure that they cannot act without motives. Mr. Alexander, not long since, fairly posed Mr. Mill by asking him, "Having touched the left side of your nose, do you not *feel* that you *could* have touched the right instead?" Notwithstanding the fairness of the question, and the earnestness of the "Yes" or "No" with which it was followed up, Mr.

Alexander, it appears, so far as I have learned, did not succeed in coaxing an answer from Mr. Mill. But, of course, we all *feel* that it is quite free to the great bulk of us at present to touch either side of our nasal prominence we please. Not that it will be altogether possible for us to exclude, *even in such a case as this*, what may be called the play of motives. Whether we elect to touch the right side or to touch the left side, it will be difficult to banish from our mind's eye what might be called a motive—and a motive not a bit too trivial when compared with the action. We do not generally act without a motive, and, in fact, we feel ourselves in no circumstances at a greater loss than when that is required of us. Your socks lie there for you to put on of a morning, and it is really, for the most part, quite indifferent to you which shall be made right and which left. There is no doubt you *can* put either on the right foot, and you are really quite willing to *put* either on it; but you feel it a bore that such a question should have at all turned up. You sit there with your feet naked, feeling that but for the question they would have been clothed, and, motive, or no motive, without difficulty. You are glad to compound for a motive by making right the sock nearest to the right foot, by closing your eyes and taking the first you catch, or even by tossing up to settle first choice. All this shows, however, how habitually man acts by motives; how impossible it is for him to act without motives, even in circumstances the most trivial and indifferent. Rather than act without a motive, we *shut our eyes*, or we *toss up*.

Now the true light on the matter is just a reversal of what is usually believed in England on this question. To act *by* motive is to act *freely*, to act without motive is to act *under necessity*. Possibly some of you may object here: We know that distinction already, but we remain unconvinced; for though *moral* necessity is not *physical* necessity, it is still a necessity, and compels obedience. But my answer is briefly: Physical necessity (and I beg you to observe that physical means *natural*—what is of mere *nature*)—physical necessity is the only necessity, and moral necessity is freedom. That only is free which is amenable solely to its own self; but in obeying moral motive it is my own self—my own inmost, deepest, truest self I obey; and therefore, it is, that in the

very obeying of it I am free, and all the more free the more thoroughly moral it is—the more thoroughly it is my own self. In the case of the socks no motive was present, and I was not free; to free myself I had to shut my eyes, I had to toss up, or I had arbitrarily to invent a motive and take the sock nearest. Now, what I call being bound in regard to the socks, is what would be generally stated in England as a proof of freedom; whereas what would appear very generally a proof of necessity in England would possibly, according to the views which I adopt, be used as a proof of freedom. Thus, as regards the socks, I should be held free in England so long as I was *without motive*, and bound only when, in *obedience to a motive*, I put the *one* rather than the *other* on the right foot. Now my way is to reverse this. Should I discover, for example, that the one sock had been worn on the right foot the day before, and decide, from economical motives, to give it the benefit of a change and wear it on the left foot to-day, I should really be acting in freedom, for I should be acting according to reason—I should have *a reason* for my action, I should have *a motive* for my action.

Really Kant and Hegel have completely determined this question. Kant is nowhere more convincing than precisely here, and it is precisely here that he is ever eloquent. What fine pictures he gives us in this connection of how a man acquires the esteem of others, acquires his own esteem, just in proportion to the completeness with which he tramples on *commodity*, on self-interest, and yields to the universal—to moral motive—and that without hope, without chance of reward! Accordingly, it is quite clear to Kant that, besides *empirical* motives—that is, *sensuous* motives, or, as he otherwise calls them, *material* motives, *pathological* motives—there are motives of *ideas*, motives from *within* and not from without, *actual prescripts of reason unto its own self*. If motives were only empirical, he argues, action would be only *hypothetically conditioned*, that is, the action would be viewed only as a means to an end. Reason in such circumstances could only assist in the discovery of the *advisable*: it could not command the *obligatory*. There would result only *prudential rules*, not laws of duty—directions, prescripts *technical* merely, suggestive of an *art* to be

acquired rather than a course of *conduct* to be categorically required. Where motive is empirical, will can only receive a *maxim*, not an *imperative command*; for an *empirical* object must act on *appetition*, on desire, must presuppose a craving subject under the influence of pathological feelings—inclination or aversion, &c. Maxims, then, are only subjective: and the most general expression for a subjective maxim is *self-love*, the general object of which again is felicity, happiness, one's own satisfaction. But felicity, as already said, though naming a *whole* of satisfaction, and though, in such generality, an ascension over the random contingency of particular desire cannot furnish a *law*, it is but a general title over infinite diversity: no two, as we saw, are agreed on happiness; but even were there agreement among us as to the object of happiness, the foundation would still be pathological and contingent, devoid of the necessity of a law. In fact, it is plain that Kant sees happiness, though a general name, to be still—as its aim is *enjoyment*—a *particular* desire. There *is*, then, a will that takes no note of happiness, that respects itself and is respected, just as it tramples down happiness, just as it tramples down self-love. This will, independent of all sensuous motive, obedient only to its own self in its own reason, to its own law, to its own categorical imperative, is free-will. And how such pure rational *form*, free from all sensuous *matter*, should be adequate to objective commands, *a priori* binding and universally necessary, to categorical injunctions good for all rational beings, it is not difficult to understand. Were it not so—were there not a practical voice of reason, unmistakable, irresistible, clear, intelligible even to the commonest—it is plain to Kant that morality would be destroyed. I may mention here one or two of Kant's illustrations in his general support—"Labor when young not to starve when old": here plainly there is a *condition* offered you, and the prescript is only *hypothetical*. This is not so, however, in the case of such a proposition as "You must not promise falsely": there the command is categorical and direct. Kant asks, too, "Under penalty of death, would you, at command of the king, give false witness for the destruction of an innocent man?" and points out that your own state of mind will prove that you *can* die rather than so act, as it is

clear there that you at all events *ought* to. In this way, Kant shows the eye of duty to be bent forward to work only, and never thrown backward to consequences. That active duty is attended by a sense of doing what is right, which may be called satisfaction, cannot be doubted; but it is not for this satisfaction—it is not for the satisfaction expected—it is only for the command given that duty acts. Many a one has died for duty, at the stake or on the wheel, with scarcely a feeling but that of the physical suffering, knowing only that it was *necessary* for him so to do. It is absurd, then, to convert *moral satisfaction* into *pleasure* (eudæmonism), and assert the same to be the sole rule of action. That man must have a disinterested nature—that man must be thankful for small mercies, who can see in such cases (as death on the wheel or at the stake) a *satisfaction* for the *enjoyment* of which he would readily die! It is thus, then, that Kant, contrasting subjective, empirical, contingent, hypothetical maxims, dependent on pathological, material desire, with objective, pure, apodictic, categorical imperatives, dependent on absolute form of reason—it is thus, I say, that Kant in the existence of the latter makes good the fact of free-will.

In this matter Hegel only follows Kant, bringing ultimate abstraction to all, ultimate completion, ultimate system, ultimate support. He, too, accentuates free-will; that to Hegel, also, is the whole ground and basis of the practical world. "The object of the science of Right," he tells us, "is the human will, with special reference to the relation of the *particular* to the *universal* will"; and free-will, accordingly, is that will which hears the universal only—which implicitly obeys the universal, let the interest of the particular be what it may. He contrasts the phenomena of will with those of physical nature, and insists on the inapplicability of the law of causality to the former. In this law, he observes the cause but *repeats* itself in the effect—the motion in the ball is the same motion that was in the bat, the water on the street is the same water that was in the rain-cloud—but we see no such identity between the *motive* and the *act* of will. The *motive* does not repeat itself in the *act*: the act is the expression not of the *nature of the motive*, but of the *nature of the agent*, who is simply roused to put *himself* into operation. Here it is no

mere effect that we see passively repeating the necessity that lay in the cause, but a wholly new power in act, a power that meets actively what comes to it as motive, that changes its direction, that modifies it, and can even *negate* it. "Circumstances and motives," exclaims Hegel, "master a man only so far as *he yields* to them. . . . He who appeals *for excuse* to such influences only degrades himself into a thing of *nature*: his act is his own, not that of somebody else, not the effect of something external to him." But Hegel goes systematically to work here, and displays at large the nature of the will, and according to every movement of the notion. The will, in fact, is an excellent illustration of the notion, for the will is concrete, the will just *is* the notion. The will is the Begriff, that that ideally be-grips or be-grasps all, that that ideally involves or implies all; or it is that in whose pure negativity, in whose pure self to self-ideality, the whole foison of the universe potentially lies. *So* it is specially in its own form proper; *so* it is specially *universal*. Will can retire into its own self, will can abstract from all and everything, will is the possibility of pure universality. It is this possibility that is the condition of volition itself: without this power of reflection, without this power of abstraction, it would be in vain to talk of volition at all, which only *is* if it *can* keep itself indefinite. This, then, is the moment of universality in will in which it abstracts from every determinate state of its own self, and, under every determination, remains indeterminate and equal to itself. Man can abstract, in suicide, from his very life: the beast cannot, whatever anecdotes to the contrary may be told to amuse us.

But the will cannot remain abstract, it must *realize* itself; *universal* will must pass into *particular* will, and the question now is, *What* shall be willed? If only the gratification of our sensuous needs and greeds, then evidently what is willed is something foreign to will itself, something limited, something contingent. Will, even there, knows itself not the particular greed, and capable of denying such. This is freedom, but it is only freedom *in form*, only *formal* freedom; it is not *material* freedom, not freedom *in matter*: and without freedom in matter, there can be no true freedom, no free-will. To that it is necessary that will should will its own

self. And this is the *singular*, this is the moment of singularity: here will is present only with its own self, and so free. But how shall will will its own self? How otherwise than by willing its own thought. Will is but thought, thought is but will. Free-agency is the realization of one's own self; but that is thought, and the realization of thought as thought can only take place in ethical institutions—in Law, Morality, and the State.

In exposition and illustration of these three moments of will much can be alleged, and, by Hegel, has been alleged. A word or two in regard to this must now suffice however.

As regards universality, for example, that is really just one aspect of man as capable of generalization as the power that generalizes. The focus, the *punctum vitale*, in man is simply generalization, which is only another word for thought. But to generalize thought is the same thing as to universalize will. The *beast* is driven ever by an *individual conception*, by an *individual* motive; but man in both respects will be controlled—ultimately—only by the *universal*. And what a difference this makes one can see without difficulty. To *have* a habit—as a beast may have—is one thing, but to *know* I have a habit is quite another thing. In this latter case reflection has set in; the habit is not only known, but, what is other to it, its opposite is known, and a judgment that may negate the habit becomes at once possible. The particular, in short, is now received into the universal, and may disappear there. There are times when such disappearance becomes the one historical fact. During the French Revolution, it was the *universal* of will alone functioned. Every *particular*, accordingly, was nought—even the particulars, particular after particular, then and there suggested—and madness ruled the hour, destruction was the lord of all. Not a single particular, not one *difference* could be tolerated, whether rank, or birth, or fortune, or talent, or virtue, or even beauty. That will can withdraw itself into the abstract universal, and become *actively* the universal void, is here evident, just as it is evident that it can become also—in the worship of Brahma, for example—the *passive* void.

As concerns will in *particularity* again, that form is familiar to all of us, for it is will as each of us, for the most part,

uses it. This is the form that is commonly either opposed or defended as free-will, and, as we have seen, both opposers and defenders are equally beside the point. Suffice it to say here that man certainly receives from nature a variety of desires, and that, as a *natural* being, he obeys these. That he should so obey, however, is not for him a necessity: man is also a *rational* being, and *can* receive every particular at the bar of the universal. It is his, then, to raise the desires of nature into motives of reason—to convert them into the rational system of social life; and when he obeys them, then he but obeys his own self. However limited, contingent, subjective, our desires may be, it is certain that they can be freed, articulated, and objectified, into an organic whole—Law, Morals, and the State. This is the “*liberty of a wise restraint*,” this is the “*necessity in duty that will make us free*”; and the man who knows not so to restrict and restrain himself, will never come to anything. Only he who can accept the limit will ever reach the true illimitable.

This limitation, in fact, is the true concrete will, the particularized universal, will in the moment of singularity (and singularity here has not the meaning of individuality). This, in a word, is the true free-will. For what is this but thinking will—will, then, that wills its own implement, its own self? And it is certain that to be a free being it is only necessary to be a thinking being: the right of freedom is but the privilege of reason. What Hegel calls objective spirit is but the *realization of free-will*—of will, rational will, thinking will, substantiating itself in actual outward fact. *That* actual outward fact is the world of Right, the rational system of observances, legal, moral, and political, into which a community of reasoning beings, by very nature, and that is *by very nature of the notion*, sunders. So, however, will only works itself free from its own individuality—its state of *nature*—emancipates itself *from* nature into reason—realizes itself into the substantial freedom of organized universality. What we have here, in fact, is the great distinction—in a *moral* reference—between subjectivity and objectivity. When I think what is *mine* only, when I do what is *mine* only, I think a mere subjectivity, I do a mere subjectivity, which in *rerum natura*, which in the universe of things is simply noth-

ing and nowhere and of no account; but when I think and do what *all* in thinking and doing can appropriate and call theirs, then I think and do an objectivity, a concrete and a permanent that actually functions in fact. To such a word as *mine*, subjectivity and objectivity give a double accent. What is *mine* subjectively, as of this special particular passing individual who now speaks, I must *italicize*; but what is MINE objectively, I must write in small capitals; for that mine is MINE as belonging to my essence, which is humanity as humanity, reason as reason. The italicized *mine* is what sunders and separates and isolates us, each from the other, as so many uncommunicating and incommunicable individual, distinct atoms; whilst the MINE with a double accent, the MINE in small capitals, is what brings us all together into a concrete unity, into a living universal. And it is here that we can discern our only duty, which is to raise subjectivity into objectivity, the contingent individual into the necessary universal. Almost, we might say, our only duty is twice to italicize "mine," or our only duty is in this way to negate the negation. To italicize "mine" once is to set subjectivity, to destroy "mine," really to negate it; but to italicize "mine" twice, is to set objectivity, and negate the negation. Now this is the one object of education—or this is what ought to be that one object; for education is not a mere chattering of vocables. *Nature* is a system of mechanical necessity; every one member of it is in blind interdependence with and on all the rest, and none is for itself. This, too, is the case with man so far as what is called *nature* in him is concerned. Nature in man, in that sense, is his needs and greeds, and in these man is bound and not free; but there is in him the possibility of freedom: he can reflect, he can retire into his universal and negate nature—nature in the sense that it is the individual particular. Reflection does not remain by the particular that is presented to it, but opposes to it another—opposes to it its own contrary. Now precisely this is the business proper of education—to rouse reflection, to convert *instinctive* action into *reflective* action, and reflective action into *free* action—into the free action of the *emancipated universal*. So it is that our needs and greeds, our vanities and vainglories, and all that holds of mere nature in us, are controlled—

our own essential will, our free-will realized. "Education," says Hegel, "has for object to raise man into a self-dependent being, that is, into a being of free-will. With this intention many restrictions are imposed on the inclinations of children. They must learn to obey, so that their individual or special will in its dependence on sensuous needs and greeds may be sublated, and their true will freed."

In man, then, evidently, there is a possibility that lies not in the lower animals: *his* will *may* be raised from a will of nature, a will of the particular, into a will of reason, a will of the universal; but there exists in *this* world no power that could raise *their* wills so. The lower animal is adequate to a *particular* only: its motives are *individual* incitement after *individual* incitement, each of which it only blindly obeys; universal it has none. On the other hand, *it is the single antithesis of universal and particular that makes the whole world of man: that cross* is the foundation of his science; that *cross* is the foundation of his law, morals, politics, art; that *cross* is the foundation of his religion. The antagonism that lies in this *cross* is the pulse of history, each beat of which is but the conversion of the lower into the higher. This antithesis or cross has hardly yet been looked at by any man in full consciousness, as it were, with his eyes open, perfectly aware of the importance of what he looked at. Nevertheless, it is the ultimate and absolute secret: it is the *Notion*, the *concrete notion*. No highest philosopher for centuries will have anything to do but to make this notion *explicit*, bring it into full consciousness. Free-will, as we have seen, is but another name for it, and free-will is but a will according to conscious motives. Those then, as we have seen already, who have hitherto discussed this question have simply mistaken the hinge on which it turned, whether they supposed themselves to attack, or whether they supposed themselves to defend. It is as erroneous to say, on the one side, man must act by motive and is bound, as to say, on the other side, man can act without motive and is free. Man *must* act by motive, and it is the very necessity of that *must* that frees him. If man *could* act without motive, he were not free, but bound. It is the existence of conscious motive that proves the existence of the universal, and in the subordination of the particu-

lar motive to the universal motive lies freedom. As Hegel points out, then, that man is free because he can do what he likes, is a conception very wide of the mark. In short, man is free because he cannot do what he likes: man is free because he must obey motive—man, that is, in reference to the universal in him. Similar blunders are not rare in philosophy. There is subjective idealism, for example. Well, because in the relation of a subject and an object there is no possible way of the former *knowing* the latter but *within*, it is argued that the latter also must *be* within. That is, the very reasons I allege for knowing an object *without* are used by subjective idealism for *not* knowing an object without. That that alone renders a knowledge of externality possible—the very condition in which that knowledge roots—is used for the annihilation of all possibility of its own progeny! We see the same thing again in regard to a substance and its qualities; a substance can only make itself *known* by its qualities. Such is the temper of the day, that, because that is the case, it is supposed to be philosophy to say, though it is only in consequence of its qualities that a substance is *known*, it is also only in consequence of its qualities that a substance is *not* known, and just because it is only in consequence of its qualities that it *is* known! Here again we see the very condition of knowledge is made the very reason of ignorance—the reasoner looking very grave at the result, pulling his collar up, and calling himself a philosopher. As it is in these cases, then, so it is in that of free-will. It is only in consequence of sensation that we *can* know an external world, and therefore it is only in consequence of sensation that we *cannot* know an external world. It is only through qualities that a substance is known, and therefore it is only through qualities that a substance is *not* known. It is only through motives that a free-will is possible, and therefore it is only through motives that a free-will is *impossible*. It is really marvellous how long very respectable men, how long the whole world, will allow itself to be stultified by such transparent hocus-pocus.

It is not moral necessity but moral freedom that we should say of will then; for in truth the necessity of will is the only freedom. All outward things, all things of nature, have their

very essence in mechanical necessity; but all inward things again, all things of reason, have their very essence in freedom, and so it is that the two worlds are opposed. Will is universal; there is no object *its* that it does not make *its*; it can abstract from everything. Will, then, wills its own self, and therefore is it free. The will that wills its own self must not be conceived as self-will however. The will that must indulge itself in every motive it wills, is a vain, weak, spoiled, sensuous will, and is generally named self-will, or caprice. That is a will given up to mere *nature*, and is not free but bound. There is a will again which we name *wilfulness*; a will, that is, that will not give up what *it* wills, and for no other reason than that it is *it* wills. Such wilfulness is sometimes regarded as constituting strength of character; but without the universal it is as weak as the will that I have called *spoiled will*, and certainly, for the most part, far more dangerous. It is neither the indulgence of spoiled will, then, nor the stubbornness of wilfulness that makes freedom; it is only the universal, and in the universal lies the *community* of mankind. *All* take part in an action, *all* approve or disapprove, for each in will feels himself universal, and through that universality reflected in the other. This subject of free-will—which, as has more than once transpired, is the root of law, and which I have been obliged somewhat to lean on as the very principle and centre of the philosophy of law—this subject cannot be better closed than by a sentence or two direct from Hegel:

“Of no idea is it so generally known that it is indefinite, ambiguous, liable to the greatest misconstructions, and in reality, consequently, subjected to them, than of the idea of free-will, and none is in current use with so little intelligence. But, as we may express ourselves, the *free* spirit being the *actual existent* spirit, or the spirit that actually prevails in human affairs being the spirit of free-will, misconstructions in regard to it are of the most enormous consequence; for when persons and peoples are once for all possessed by the abstract notion of freedom as such, freedom on its own account, no other has such irresistible power, and just because it is the very inmost being of spirit—its very actuality and self. Entire quarters of the globe, Africa, and the East, have never had, and have not yet, this idea. The Greeks and Romans, Plato and Aristotle and the Stoics, had it not. On the

contrary, they conceived only that a man by his birth (as Athenian or Spartan citizen, &c.), or by strength of character, by education, by philosophy (the wise man is free even when a slave or in chains), only so did they conceive a man to be free. This idea came into the world through Christianity, in which it is that the individual, *as such*, has an *infinite* worth, as being aim and object of the love of God, and destined, consequently, to have his absolute relation to God as spirit, to have this spirit dwelling in him. Christianity it was, namely, that revealed man *in himself* to be destined to supreme freedom. . . . This idea, then, is the very actuality of man, and not that he *has* it, but that he *is* it. *Christianity* has made it the very actuality of its adherents—the very actuality of its adherents, not to be a slave for example. If reduced to slavery, if the control over their property is to depend on caprice, and not on laws and courts of justice, then they find the very substance of their being violated. This volition of freedom is no longer an impulse, an instinct that demands its gratification; it is now *character*—a spiritual consciousness that is above impulse, that is above instinct. But this freedom, this free-will, and free-agency, that possesses such implement, such filling, such aims and ends, cannot remain as notion only, as mere principle of the mind or the heart; it must unclothe itself into objectivity—into an organic actuality, legal, moral, political, and religious.”

This, then, is the position we have now reached: that man, as free-will, is the objective spirit, and must realize himself in the institutions, legal and other, by which society lives. In one word, then, the matter of law is our own free-will, and its existence in the state is but its *realization*. It is the course which this realization, in obedience to its very principle, takes that we have now to see.

Free-will, then, is the root of all, and freedom, liberty itself, must constitute the contents of Right or of Law. But free will, at first, taken just so, is abstract, is without this development of its contents into its own concrete system—is, as yet, but *notion*; it is not yet *idea*. So it is, as yet, but direct or immediate to itself and us; it is, as yet, but one and single. Thus immediate, direct, single, *one*, it is a *Person*. But free-will is essentially an action, and that action is essentially a movement from within *outwards*. Now, the *nearest* outer to its own self is *another*—*another person*. The first prescript of Right, then, is, Be a person, and respect others as persons. It is plain, also, that in this abstraction there are no other

interests present — no variety of concrete interests as under morality. There is no concrete with its various composing members or interests to disturb beside it. There is no interest in question but the single interest of free-will, no command but that will is to be free. But, as between persons, that amounts only to a *prohibition*—obstruct not the free-will of the person. This prohibition is also *categorical*; it gives no reasons for itself; it interposes no conditions; it is categorical, and not hypothetical. It does not require, as is required in morals, the other person to follow it with intelligence, assent, conviction; it never asks for any motive or design or intention on the part of the other person. It simply says, categorically, Infringe not the free-will of the person, or violate not personality. These consequences really flow directly from the nature of the case. So it is, then, that this division of Right—the first—is but formal, abstract, without any concrete feeling, implement of humanity as such. Or personality gives the *capacity* for legal rights; it is the foundation from which all abstract formal right arises, but even as such it is only abstractly universal. There is no *particularity* in it as in morals, no special interest that concerns me as an individual, say. It has no thought of my individual advantage or welfare; and is wholly indifferent to my agreement with it, to my convictions in its regard, or to my designs and intentions in the realization of it. The very abstractness of the universality here has its own limitations, then. To be a person is, in one sense, to be what is highest; but to be a person is to let all our other concrete humanity fall, and be also what is lowest, or, at all events, *least*. So it is that we find the individual who is only a person, the individual who only fixes himself in his *right*, for the most part so thin and narrow. We see, also, that it is generally the rude and unformed man who so stubbornly himself in his abstract right, while the richer, fuller nature has an eye for every side of the interest at stake, and has no difficulty in complete resignation of his abstract right. An exalted sense for formal right may prove in the end but mere *wilfulness*, indeed—a formal will that in its own intensely pure formality can only remain blind to every concrete consideration beside it. I recollect of a case, indeed, where a poor man nearly ruined himself by the consistency

of his faith in formal or abstract right. He was the landlord of a workshop; and the tenant, without consent asked or given, took it upon him to enlarge the old windows in this workshop, and open new ones. "The workshop is mine," said the landlord, and you have infringed my rights." "But what I have done," said the tenant, I have done at my own expense, and what I have done is an improvement to the property." "I admit that," said the landlord, "but you had no right to make alterations in *my* property without *my* consent, and I will take you to law therefor." Accordingly, this landlord did take this tenant to law; he lost his case before judge after judge, and he was just on the point of taking it to the House of Lords, when death kindly stepped in, and by *its* abstraction did justice to *his*. Here was a true instance of exalted devotion to abstract right, but the *concrete* injury did not stop there; for the tenant, disgusted with the doings of the landlord, neglected his business, neglected the property, allowed a valuable boiler to burst, became in the end bankrupt, and left a workshop that was worth a great deal to the *landlord* worth next to nothing to his *heirs*. So much for the worship of formality. The higher nature, then, may, in view of other and more concrete interests, let its formal right fall.

And it is very subtle on the part of Hegel to point out, accordingly, that formal right is only a possibility; for a possibility, as he expressly defines it here, "is a *Seyn*, a being, an existent something, that has the import also not to be," and we can see *that* in the interest before us. My abstract right *is*, but how often is it also *not*? as I think it not worth while to assert it. That is, abstract right, beside concreter interests, has only the significance of a possibility, and it has its own felicity when Hegel remarks further, that, accordingly, the legal assignment here is only an *Erlaubniss* or a *Befugniss*, which, I suppose, I may translate by *permission* and *title*—the meaning being that such rights may remain empty, and be nothing but a permission *to*, a title *to*. Nevertheless, though such be the dangers of formal or abstract right, the importance of the position must not be lost sight of. Neither individuals nor nations are even *concretely* advanced until they have reached a knowledge of the stage of abstract personality. Such advance must be allowed to have been largely

an achievement of the Romans, of whom it may be said, in reference to their legal assignments, that their greatest feat, even in the very acme of their development, was to perfect this consciousness—to perfect the inviolability of the person as person; for the particular individual, if richer, more concrete, is so mostly on the *natural* side, and it is consideration of the universal individual, the person, that brings freedom. “In personality, indeed, it lies that I, as, on all sides of me, in inward desire, need, greed, and appetite, and in direct outward existence, *this* perfectly limited and finite individual, am yet—as person that is—pure self-reference, and know myself, even in my finitude, as what is infinite, universal, and free.”

In abstract Right, then, it is the mere universal will that is considered, without respect to the individual in his further concrete interests, or in his (moral) convictions and intentions: it has no object but the human free agent as such. In short, free-will respects only its own self. Even in the other it respects only its own self. So it is that each is a person, and so it is also that all the *edicts* of law here are *interdicts*—all its positive *commands* are in ultimate instance *inhibitions*. This by reason specially of the very abstractness of the person. I may add here that, if in respecting other persons we respect also ourselves, it is very important to see that in respecting ourselves we respect also them; and this is a profound lesson to that morbid self-contempt that, in these days of loudness and superficiality, is so common in the quieter and the deeper.

But the Person cannot *remain* abstract: he must *realize* his freedom, obtain objective existence for it; the *notion* must become *idea*. So abstractly immediate, so abstractly direct to its own self as will on this stage is—and at the same time so abstractly inner to its own self—for *plurality*, the consideration of *persons*, makes no difference here, each is but *a person*, and as empty and abstract as the other—so abstractly immediate, though inner, then, what different thing will can here realize itself in, will be itself immediately and externally abstract—a thing, an external thing. But for will to realize itself in an external thing is to take *possession* of it—is to enter into its *Property*.

Of course, gentlemen, you see what all this amounts to. In this mode of statement, when one part of a subject is completed, and it is now necessary to go to a new part, this new part must *introduce itself*, and not be *just turned to*. Thus we saw how, the intellectual powers having been discussed, and the turn of the active powers being now arrived, these latter were not just tacked on to the former, but the former actually *became* the latter. Theory, by a turn of the hand, *became* practice; intelligence, will. Now will, thus come upon, is as yet undeveloped, and so it can be figured as still something *single, one, internal to its own self, abstract, &c.* But will that can be so described *corresponds to the definition* of a Person, and *is* therefore a Person. Again, this abstract personality must *realize* itself, but, being so *abstract* and *internal* itself, the *other*, in which only it can realize itself, must, on *its* side, be *externally* abstract, &c.—that is, an outward material thing—Property. I am not sure that you will yet altogether relish this new mode of proof; but I think you will now see something of its nature.

We have now once for all arrived at Property; and Property, Contract, and Penalty, shall be the themes of our two remaining lectures.
